

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

-----:
IN THE MATTER OF: :
: :
Micherie, LLC :
t/a Cheerz : Fact Finding
: Hearing
7303 Georgia Ave NW :
Retailer CR :
License No. 95178 :
Case No. :
-----:

OCTOBER 1, 2014

The Alcoholic Beverage Control
Board met in the Alcoholic Beverage Control
Hearing Room, Reeves Building, 2000 14th
Street N.W., Washington, D.C., Chairperson
Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
DONALD BROOKS, Member
NICK ALBERTI, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

P R O C E E D I N G S

2:07 p.m.

CHAIR MILLER: Okay. I am going to call the fact finding here for the establishment called Cheerz, located at 7303 Georgia Avenue Northwest, License Number 95178, and ANC 4B.

This is a fact finding, and everyone who is here to speak to this case can come forward and take a seat at the table. And when you do, there should be a sheet of paper to sign in on.

When you're ready, if you could identify yourselves for the record, please.

MR. BURCHELL: Good afternoon. Kelly Burchell, legal counsel on behalf of Cheerz.

CHAIR MILLER: Okay.

MR. GRAVES: Marvin Graves, owner, Cheerz.

CHAIR MILLER: Okay.

MS. WATSON: Deanna Watson,

1 owner, Cheerz.

2 CHAIR MILLER: All right.

3 MR. MCPHERSON: Good afternoon.

4 I'm Alpha McPherson, President of GFEDDS
5 Neighborhood Incorporation.

6 CHAIR MILLER: All right.

7 MS. GREEN: I'm Sara Green. I'm
8 the Commissioner of 4B01.

9 CHAIR MILLER: Okay. I just want
10 to just state for us to start that on July
11 16, 2014 the Board issued an Order entitled
12 Notice of Intent to Nullify and Void
13 Settlement Agreement and Stay of Enforcement
14 of Settlement Agreement in which the Board
15 found that the Settlement Agreement attached
16 to the Cheerz license had terminated by the
17 terms of its own Settlement Agreement. And
18 we, in that Order, though, invited anyone
19 who had an objection to file an Objection,
20 and then stated that we would have a
21 contested fact finding hearing to hear from
22 you all.

1 Basically, this hearing, no one
2 is under oath, it's not testimony. It's
3 just what you might call argument, or
4 whatever. Present whatever arguments you
5 want to make, if you still have them, that
6 the Settlement Agreement has not terminated.
7 So that's the topic of this hearing.

8 So I think that we should start
9 with those who have objection, if you want
10 to make your objections, and then if the
11 applicant or the establishment wants to
12 address them, they can. And we're basically
13 here to listen. We already have issued an
14 Order, but we will listen to your concerns
15 and then take any under advisement. Okay.
16 Would you like to express --

17 MR. MCPHERSON: Yes.

18 CHAIR MILLER: Okay. As you
19 filed an Objection. Isn't that correct?

20 MR. MCPHERSON: Yes, I did.

21 CHAIR MILLER: Okay. It says
22 Objection to Notice of Intent to Nullify and

1 Void Settlement Agreement and Stay of
2 Enforcement of Settlement Agreement. Okay.
3 We have that in our record.

4 MR. MCPHERSON: You have it in
5 the record. Okay.

6 CHAIR MILLER: Yes. Is there
7 anything you want to add to that or else --

8 MR. MCPHERSON: Sure, there is.
9 Yes.

10 CHAIR MILLER: Okay.

11 MR. MCPHERSON: There's things I
12 want to add to that. You do have my
13 objections, which I --

14 CHAIR MILLER: Dated August 4th,
15 2014?

16 MR. MCPHERSON: That's correct.

17 CHAIR MILLER: Okay. Yes.

18 MR. MCPHERSON: I do believe that
19 the Board's interpretation of paragraph 22
20 is incorrect. And paragraph 22 covers any
21 business that is going to apply for a
22 license for that restaurant. Also, the

1 agreement says that, your Order says that
2 you intend to null and void because the
3 licensee has no connection to Silver Sands
4 other than possessing its license, the
5 agreement is of course tied to the license.
6 That's what the agreement is about.

7 And is Cheerz leasing the
8 premise. Cheerz is leasing the premise from
9 the owner, to the Gordons, and there is an
10 important connection there. That part is
11 not clear, but I do suspect that a lease is
12 there with the Gordons.

13 And also, finally, does Cheerz
14 absolutely own the license right now? Is it
15 their license? Could it legally sell that
16 license today without having to go through
17 the Gordons? Could they transfer it? Those
18 are my questions.

19 CHAIR MILLER: Okay. They're
20 questions, as opposed to arguments.

21 MR. MCPHERSON: Well, I mean,
22 they're questions, and they're for argument

1 if that's the --

2 CHAIR MILLER: Okay.

3 MR. MCPHERSON: someone wants to
4 argue those questions, sure.

5 CHAIR MILLER: Would the
6 establishment like to respond?

7 MR. BURCHELL: Well, are we only
8 responding to the questions or any
9 additional issues that were raised in the
10 original objection that was filed on August
11 4? Just for clarification.

12 CHAIR MILLER: This is pretty
13 open. I mean, we --

14 MR. BURCHELL: Okay.

15 CHAIR MILLER: We issued our
16 Order. We made a conclusion, and then we
17 have already gotten written statements in
18 response. So it's really -- if there's
19 anything you choose to add, to put on the
20 record, it's really up to you. We're not
21 soliciting anything in particular.

22 MR. BURCHELL: Okay. No problem.

1 CHAIR MILLER: Okay.

2 MR. BURCHELL: I'm going to
3 address the issues that were just raised by
4 Mr. McPherson first --

5 CHAIR MILLER: Okay.

6 MR. BURCHELL: and then
7 supplement our Argument that we submitted on
8 the 28th of August. So I'll make sure to
9 make this clear so everyone understands
10 where I'm going and I'm not skipping around.
11 Okay?

12 CHAIR MILLER: Okay.

13 MR. BURCHELL: If there is any
14 questions, please stop me and seek
15 clarification. Okay.

16 First of all, with the question
17 of whether paragraph 22 covers any business,
18 we submit that the plain language of the
19 Voluntary agreement is pretty clear in that
20 regard. The plain language states, the term
21 of this agreement shall be the entire period
22 during which Appellant, Dr. Wesley Gordon,

1 or any company established by applicant or
2 Dr. Wesley Gordon holds any ABC license for
3 any business at the premises.

4 You cannot add additional
5 language to that provision, and we submit
6 that the Board got it right in the first
7 place, that this provision only applies to
8 Dr. Wesley Gordon, the applicant, which is
9 Caribe Food Corporation, and any
10 establishment that is set up by either
11 Caribe, namely a subsidiary, or something
12 that's set up by Dr. Wesley Gordon. And in
13 this case, we do not have any of those
14 connections.

15 Micherie, LLC is owned by three
16 individuals, two of them which have already
17 identified themselves on the record, Mr.
18 Marvin Graves and Ms. Watson. The third
19 person is not available today, but her name
20 is on the Settlement Agreement that's
21 already been submitted. They have no
22 relation to Dr. Wesley Gordon. They are not

1 part of Caribe Food Corporation. So in that
2 sense, the plain language of paragraph 22
3 should be held. It doesn't transfer with,
4 the Settlement Agreement doesn't transfer
5 over to Micherie. It only transfers if,
6 one, like I said, people are affiliated in a
7 business with Caribe Corporation or Dr.
8 Wesley Gordon.

9 Now here's the other big thing,
10 and I didn't argue this in my objection, and
11 it's something, this is a new argument, so
12 just note it for the record.

13 CHAIR MILLER: Okay.

14 MR. BURCHELL: When I was going
15 through the statutes, now one big part of
16 this agreement is that there cannot be any
17 modification of the agreement without the
18 parties all negotiating it. Okay. So, in
19 other words, for there to be a transfer of
20 ownership from Caribe Corporation, and the
21 license, to someone else, under the terms of
22 this Settlement Agreement, there would have

1 to be some type of modification of the
2 Settlement Agreement. However, that's not
3 allowed under the law. Under DC Code, I'll
4 give you the exact provision. Under DC Code
5 25-4-46.02 that this involves restraints on
6 the ability of an applicant or existing
7 licensee to operate its business, and it
8 specifically identifies notifying the
9 transfer of ownership as one of the
10 provisions within any Settlement Agreement
11 that's not enforceable.

12 The other provision that stands
13 out is requirements that the ANC or
14 community members must approve of future
15 ownership changes. So in that set of
16 circumstances -- now this is assuming that
17 you think that the plain meaning of
18 paragraph 22 does include Micherie and does
19 extend, then there would have to be some
20 type of renegotiation of the agreement,
21 which that provision is not allowed, is not
22 sanctioned by law. That's our second

1 argument to that provision. We defer back
2 to the plain language -- moving on, brought
3 my notes here.

4 The next issue is whether there
5 is a lease between Dr. Wesley Gordon and
6 Micherie, LLC. We admit to that. We admit
7 that we are renting the building, but in the
8 Settlement Agreement, that does not have
9 anything to do with the liquor license.
10 Just because they rent the structure does
11 not mean that the Settlement Agreement
12 automatically applies, because under that
13 provision, if anyone rented out that spot
14 from Dr. Gordon, then that Settlement
15 Agreement would suddenly apply to them.
16 That would make very little sense.

17 The other provision is that
18 within -- I'm sorry, moving on. I'm jumping
19 around, and I apologize. The other thing
20 that is extremely important about our
21 situation is that there is, within this
22 Settlement Agreement, there's nothing that

1 discusses the operating of other business in
2 there. And this goes back to my last
3 argument. Like I said, anyone could go into
4 that, rent that building, use it for other
5 reasons, and under their argument if it was
6 rented, that Settlement Agreement would
7 apply. That's certainly not the case.

8 Now, yes. And that's something I
9 was just reminded by my clients. Dr. Wesley
10 Gordon has passed away, so they rent it from
11 his wife, this building from his wife, not
12 Dr. Wesley Gordon. Now let me go through
13 the actual Voluntary Settlement Agreement
14 also, step by step. Even if you think that
15 --

16 CHAIR MILLER: You're going to go
17 through it? Wait a second. I'm not sure
18 that's necessary.

19 MR. BURCHELL: That's no problem.

20 CHAIR MILLER: I mean, I think
21 that the basis of our Order was 22,
22 paragraph 22.

1 MR. BURCHELL: Yes.

2 CHAIR MILLER: And so I don't
3 believe we need to go much beyond that,
4 because, and 22, and I'm just going to
5 repeat it for everybody's benefit. And why,
6 and you talked about the plain meaning of
7 those words.

8 It says, the term of this
9 agreement shall be the entire period during
10 which applicant, Dr. Wesley Gordon, he is no
11 longer alive, but, or any company
12 established by applicant or Dr. Wesley
13 Gordon holds any ABC license for any
14 business at the premises. So I guess I want
15 to ask the objectors, are you aware of a
16 business established by Dr. Gordon that
17 relates to this paragraph? Dr. Wesley
18 Gordon is not alive, so then it says, or any
19 company established by applicant or Dr.
20 Wesley Gordon. Yes.

21 MS. GREEN: May I, I haven't seen
22 the lease. I mean, we should, I think this

1 is something that we're asking to be
2 provided here. I haven't seen the lease,
3 but, you know, I'm assuming, and maybe I'm
4 assuming incorrectly, and this is something
5 that the applicant can provide, that the
6 company established by Dr. Gordon still
7 remains and that this --

8 CHAIR MILLER: But it says that
9 it holds an ABC license for the business at
10 the premises.

11 MS. GREEN: No, no. I
12 understand. There's a two-part thing to
13 that. So that's, the relationship that the
14 company established by him through the
15 lease, I'm guessing it's still there because
16 of the lease. The lease is with the company
17 that is established by Dr. Gordon.

18 But the other question I have,
19 and I know this sometimes happens with other
20 ABC licenses, and that is, the question is,
21 is the transfer of the license absolute?
22 That's my question. Tomorrow, if Cheerz

1 somehow wants to transfer that license to
2 somebody else because they've decided they
3 no longer want to operate the business, that
4 they would like to go to a, you know, they
5 would like to leave, can they do that
6 without permission of Dr. Gordon? Is there
7 any way that the Gordon business that the,
8 you know, this business that Mrs. Gordon is
9 operating, what her husband had, is she
10 totally out of this? Do they have absolute
11 free rein to dispose of this license the way
12 they want to without, is there a way Mrs.
13 Gordon, you know, could, you know, could get
14 future, you know, funds from this license?

15 Are they, you know, because I
16 know there were other ABC licensees that,
17 you know, that make payments on a license.
18 They don't, you know, they, because licenses
19 can sometimes transfer for a great deal of
20 money, and there are payments made on a
21 continuing basis rather than in a lump sum.
22 So that's our question. We don't know the

1 answer. I don't know the answer. And I
2 filed my letter for the purpose of getting
3 this question answered.

4 CHAIR MILLER: Okay. So I don't
5 think that the Board's Order was an
6 invitation for you to ask us questions to
7 answer.

8 MS. GREEN: Well, I'm asking,
9 we're asking the applicant. We're asking
10 the applicant. And no, I think it's fair, I
11 mean, because we can't compel, we ourselves
12 cannot compel, the applicant to produce, you
13 know, business documents that, and my
14 request would be that the Board can ask that
15 question and that it is a fair question to
16 ask.

17 CHAIR MILLER: Do we want to let
18 him answer first? Do you have --

19 MEMBER ALBERTI: Well, actually,
20 I think I have a question related to that.

21 CHAIR MILLER: Okay. All right.

22 MEMBER ALBERTI: Ms. Green brings

1 up an interesting point. I mean, to sort of
2 put it more simply, let's call a simple case
3 where current licensees, and I've forgotten
4 the name. But the current licensees who
5 have just been issued the license to, they
6 decide that they're going to transfer it
7 back to Mr. Gordon established -- wait,
8 wait.

9 MS. GREEN: Okay.

10 MEMBER ALBERTI: A company that
11 was established by Mr. Gordon. Let's decide
12 they want to do that. Your question is,
13 well, this has been declared moot. Does it
14 go back into effect or is it continued? So
15 basically, that's your question, I think.

16 MS. GREEN: Actually, it is a
17 very, it's not quite that. It's something a
18 little different.

19 MEMBER ALBERTI: It's a variation
20 of that, all right. But that --

21 MS. GREEN: Right.

22 MEMBER ALBERTI: captures really

1 what can happen, your fear is, right?

2 MS. GREEN: That's one --

3 MEMBER ALBERTI: I know, I know
4 what you're, it's one scenario. Right.
5 Okay. I want to ask, sir, you're an
6 attorney, your name?

7 MR. BURCHELL: Kelly Burchell.

8 MEMBER ALBERTI: Mr. Burchell,
9 does the lease agreement contain any
10 provision where the license would revert
11 back to, the lease, the owner of the
12 building if there was any default?

13 MR. BURCHELL: Off the top of my
14 head, I do not believe so. However, I do
15 know that when Cheerz had the license
16 transferred over to their possession, they
17 were led to believe by ABRA that they could
18 transfer it back to anyone else. They could
19 --

20 MEMBER ALBERTI: I mean, I don't
21 want to get to that.

22 MR. BURCHELL: Yep.

1 MEMBER ALBERTI: They can.

2 MR. BURCHELL: Yes.

3 MEMBER ALBERTI: They can. The
4 question is, what happens to the Settlement
5 Agreement when they do that? And I don't
6 know the answer to that. I don't know. I'm
7 just posing that question. But aside from
8 that, my question to you, and that's
9 something that the Board --

10 MR. BURCHELL: Yes.

11 MEMBER ALBERTI: I'll let the
12 Chair direct you in terms of refining that.
13 But my question to you is, so the license,
14 so if this lessee decides, doesn't renege
15 on the rent or whatever and goes belly up,
16 is there any provision in the lease where
17 the owner of the building would have a claim
18 to that license? Is it, is it in any way
19 collateral?

20 MR. BURCHELL: Off the top of my
21 head, because I don't have those notes right
22 in front of me, I'm not 100 percent sure. I

1 do believe that the answer to that question
2 is no.

3 MEMBER ALBERTI: Ask your
4 clients?

5 MR. BURCHELL: If we could have a
6 moment, but, so I can give you an honest
7 answer.

8 MEMBER ALBERTI: I really would -
9 -

10 MR. BURCHELL: Yes.

11 MEMBER ALBERTI: That would be
12 helpful.

13 MR. BURCHELL: But one thing that
14 I would like to say is that when it comes to
15 this Settlement Agreement, if it were to
16 transfer back to a corporation that was
17 established by Dr. Wesley Gordon, I do not
18 see any reason why the Settlement Agreement
19 would then all of a sudden become effective.
20 Because under paragraph 22, that's what it
21 says. That's an agreement that is clear in
22 paragraph 22. It just doesn't extend to

1 anyone beyond that.

2 MEMBER ALBERTI: Absolutely. I
3 agree with you.

4 MR. BURCHELL: Yes. Yes.

5 MEMBER ALBERTI: I understand the
6 arguments completely, the nuance that I just
7 hadn't --

8 MR. BURCHELL: No problem.

9 MEMBER ALBERTI: I need to think
10 through.

11 MR. BURCHELL: Yes, just give us
12 a second, we could. And could we go off?

13 (Whereupon, the above-entitled matter
14 took a brief recess)

15 MR. BURCHELL: Okay. We're back
16 on. They're not 100 percent, but they think
17 that there is a provision within the lease
18 that it would revert back to Mrs. Gordon.

19 MEMBER ALBERTI: If they renege
20 on the terms of the lease.

21 MR. BURCHELL: Yes. Yes. But
22 we're, like we said, we're not 100 percent

1 sure, but we have to double-check, but they
2 believe it does.

3 MEMBER ALBERTI: Thank you.

4 MR. BURCHELL: Yes.

5 CHAIR MILLER: Mr. Burchell?

6 MR. BURCHELL: Mm-hmm.

7 CHAIR MILLER: I want to ask you
8 a question. Okay. Looking at 22, okay, we
9 know that Mr. Gordon has passed away. Do we
10 know, did Mr. Gordon establish that held an
11 ABC license at the premises?

12 MR. BURCHELL: Silver Sands.

13 CHAIR MILLER: Silver Sands.

14 MR. BURCHELL: Yes.

15 CHAIR MILLER: And what's the
16 status of Silver Sands?

17 MR. BURCHELL: It no longer
18 exists.

19 CHAIR MILLER: It no longer, it
20 no longer exists. How did it go out of
21 business?

22 MR. BURCHELL: I'm not sure how

1 it went out of business, but I do know, when
2 I was researching this case --

3 CHAIR MILLER: Okay.

4 MR. BURCHELL: earlier today, I
5 do note for the record that in 2013 Caribe
6 Food Corporation appeared, it was the May
7 10th, 2013 status hearing, that they did have
8 the liquor license renewed for purposes of
9 safekeeping, and it noted in the record that
10 the corporation was inactive as of that
11 time. However, when the license was renewed
12 in 2002, renewed and/or modified in 2002,
13 2004, 2007, 2010, it does appear that the
14 business was active at that time. And
15 that's based upon the reports that came
16 before the Board.

17 CHAIR MILLER: So, so the license
18 was with Silver Sands in 2010?

19 MR. BURCHELL: It was with, yes.
20 In 2010, and then in 2013 whereupon in 2014
21 is when it transferred over to Cheerz.

22 CHAIR MILLER: And how did that

1 happen? It transferred with notice?

2 MR. BURCHELL: We went through
3 all the procedures.

4 CHAIR MILLER: Okay.

5 MR. BURCHELL: Yes, we filed all
6 the appropriate paperwork and worked with
7 ABRA. So it did follow all the procedures,
8 there was the protest period and everything,
9 so.

10 CHAIR MILLER: Okay. So Silver
11 Sands, it transferred from Silver Sands to,
12 okay.

13 MR. BURCHELL: Just to be clear
14 on the record.

15 CHAIR MILLER: Okay.

16 MR. BURCHELL: Caribe Food
17 Corporation's d/b/a was Silver Sands.

18 CHAIR MILLER: Okay.

19 MR. BURCHELL: Silver Sands was
20 the name of the restaurant that was actually
21 there, but it was owned by Caribe Food
22 Corporation.

1 CHAIR MILLER: Okay. Okay. So
2 then is it your position -- they went out of
3 business?

4 MR. BURCHELL: From what I can
5 tell, based upon my research and records, by
6 May 10th, 2013, it was no longer in business.
7 It was only holding the license.

8 CHAIR MILLER: Okay.

9 MR. BURCHELL: That was according
10 to the ABRA reports. I found that in the DC
11 Federal --

12 CHAIR MILLER: Oh, okay.

13 MR. BURCHELL: Not the Federal,
14 the DC Register.

15 CHAIR MILLER: All right. And
16 then your license was not, your company was
17 not established by Mr. Wesley Gordon.

18 MR. GRAVES: No.

19 CHAIR MILLER: Correct? Okay.
20 So that's where --

21 MR. GRAVES: We don't know him.
22 He passed away.

1 CHAIR MILLER: Okay. So the
2 chain was broken after Silver Sands.
3 Correct? Okay. And it would be, okay.

4 MEMBER ALBERTI: So am I correct
5 in understanding that the license that you
6 own was obtained from Caribe Food. Right?

7 MR. BURCHELL: Yes.

8 MEMBER ALBERTI: And there was a
9 sales agreement, I assume, associated with
10 that?

11 MR. BURCHELL: It was as a result
12 of the lease agreement. There wasn't a
13 sales agreement, no.

14 MEMBER ALBERTI: Explain that to
15 me.

16 MR. BURCHELL: Basically, under
17 the terms of the lease agreement, they
18 agreed to transfer the license.

19 MEMBER ALBERTI: Who agreed?

20 MR. BURCHELL: Mrs. Gordon. I'm
21 not sure about --

22 MEMBER ALBERTI: How did she

1 obtain the license?

2 MR. BURCHELL: That I do not
3 know. I do know that, like I said, this is
4 speculation, purely, but let's assume that
5 if Mr. Gordon passed away and he was an
6 owner in the corporation, that it's possible
7 that Mrs. Gordon may have assumed the
8 ownership interest once Mr. Gordon passed.

9 MEMBER ALBERTI: Right. In
10 Caribe Corporation.

11 MR. BURCHELL: Yes.

12 MEMBER ALBERTI: She would have
13 inherited his interest in Caribe Food
14 Corporation --

15 MR. BURCHELL: Yes. And yes.
16 I'm not familiar with

17 MEMBER ALBERTI: But I'm
18 speculating.

19 MR. BURCHELL: their Articles of
20 Incorporation or anything like that, but I
21 do know for a fact that the license was held
22 by Caribe Food Corporation in just a holding

1 capacity.

2 MEMBER ALBERTI: So part of the
3 lease agreement is that the license
4 transfers to the lessee or, what's it?

5 MR. BURCHELL: The lessee.

6 MEMBER ALBERTI: The lessee.
7 Right. Thank you. Okay. And it reverts
8 back to the owner if they violate the terms
9 of the lease?

10 MR. BURCHELL: Yes, but it would
11 still have to go through all the processes
12 and procedures.

13 MEMBER ALBERTI: Absolutely.
14 Yes. We don't ignore that.

15 MR. BURCHELL: Yes, sir.

16 MEMBER ALBERTI: All right.
17 Okay. Okay. Go ahead.

18 CHAIR MILLER: Do you have a
19 question?

20 MR. SHORT: Yes. Forgive me.
21 I'm kind of late coming in on this --

22 MR. BURCHELL: That's okay.

1 MR. SHORT: and I'm just trying
2 to read over a few things. What year again
3 was the Settlement Agreement put in place?

4 MR. BURCHELL: There's two
5 agreements that we're seeking to void.

6 MR. SHORT: What is the date of
7 the first one and what is the date of the
8 second one?

9 MR. BURCHELL: Okay. The first
10 one I have right in front of me if you'll
11 just give me a second. February 11th, 1998
12 was the document entitled Voluntary
13 agreement.

14 MR. SHORT: Okay.

15 MR. BURCHELL: And then --

16 MR. SHORT: That was between
17 whom?

18 MR. BURCHELL: That was between
19 Caribe Food Corporation and GFEDDS
20 Neighborhood Association.

21 MR. SHORT: Okay. The second
22 one?

1 MR. BURCHELL: The second one was
2 titled, Interim Off Street Parking
3 agreement, and that was entered into on the
4 18th of August, 2000. Now we have not
5 discussed the Interim Off Street Parking
6 agreement, because our entire focus has been
7 on the Voluntary agreement.

8 MR. SHORT: So the Parking
9 agreement is still in effect?

10 MR. BURCHELL: No.

11 MEMBER ALBERTI: Now Mr. Short,
12 it may, and I don't
13 want--

14 MR. BURCHELL: Go ahead.

15 MEMBER ALBERTI: It may be
16 treated by this agency as an amendment to
17 the original Settlement Agreement.

18 MR. SHORT: Okay.

19 MEMBER ALBERTI: So in effect
20 it's incorporated into the original
21 Settlement Agreement and it does not stand
22 alone as its own agreement.

1 MR. SHORT: Okay. I was trying
2 to get that fact out.

3 MR. BURCHELL: And there are
4 references within the interim Office Street
5 Parking agreement to the Voluntary
6 agreement.

7 MR. SHORT: Well, again, I'm kind
8 of late coming in on this.

9 MR. BURCHELL: That's fine.
10 That's the reason why --

11 MR. SHORT: But what I want to
12 find out is, the agreement, the original
13 Parking agreement, how did it affect the
14 business?

15 CHAIR MILLER: Can I just say, I
16 just want to clarify in our Order we had a
17 finding of fact about the Off Street Parking
18 agreement, and that had an expiration built
19 into it

20 MR. SHORT: Since then.

21 CHAIR MILLER: Yes, and we found
22 that it had already expired.

1 MR. BURCHELL: Yes.

2 CHAIR MILLER: But that's the
3 status of that one right now.

4 MR. BURCHELL: Okay.

5 MR. SHORT: That clears some
6 things --

7 CHAIR MILLER: Okay.

8 MR. SHORT: I guess the reason
9 I'm asking these questions is because I've
10 read some Settlement Agreements since I've
11 become a member of the Board, and I've
12 noticed that a lot of these agreements are
13 because, businesses in the community get
14 along pretty good because of the agreements.
15 One side has respect for the other.

16 MR. BURCHELL: Yes.

17

18 MR. SHORT: How would this, the
19 total elimination of this agreement affect
20 the community and your business?

21 MR. BURCHELL: Actually, very
22 little, because we've already executed

1 another Settlement Agreement with ANC 4B,
2 which was ratified on September 22, so there
3 was --

4 MR. SHORT: Of this year?

5 MR. BURCHELL: Yes, yes. Just
6 about, a little over a week ago actually,
7 and that should be part of your file. I
8 know it was sent in earlier this week by ANC
9 4B. I can email it over right now. But
10 there is already a Settlement Agreement with
11 the ANC 4B. This is basically another
12 Settlement Agreement that we're just seeking
13 not to be enforced by it. Now --

14 CHAIR MILLER: I just want to try
15 to get us focus and narrowed here also
16 because there was a legal here, and we came
17 to the conclusion based upon the information
18 that we had, based upon the, which was
19 mainly based on the clear words of paragraph
20 22, that this agreement had terminated by
21 its own terms, and that's basically the
22 subject, the limited subject, of this

1 hearing.

2 If our assumptions were wrong,
3 for instance, if there was another business
4 that we weren't aware of for instance, that
5 does or did operate, ABC establishment that
6 was owned by or established by Dr. Wesley
7 Gordon, let us know, because that's what we
8 based our legal decision on.

9 MR. SHORT: Thank you for the
10 clarification, Madam Chair.

11 CHAIR MILLER: Okay. Okay.

12 MR. SHORT: I just, again, you
13 know, coming in kind of late.

14 CHAIR MILLER: But it's good to
15 hear that you've already done another
16 Settlement.

17 MR. BURCHELL: Yes. We've had it
18 ratified by the Board, we've submitted it to
19 ABRA --

20 CHAIR MILLER: Which goes to your
21 concern about community.

22 MR. SHORT: So you said you can

1 email that over to our legal people?

2 MR. BURCHELL: Yes. It was
3 emailed earlier this week by ANC 4B already,
4 and had all the necessary documents, so.

5 MR. SHORT: Thank you. That was
6 my concern.

7 MR. BURCHELL: Yes. We believe
8 it's a very fair agreement that was entered
9 into.

10 CHAIR MILLER: Okay. Do you have
11 something to add --

12 MR. SHORT: Yes.

13 CHAIR MILLER: primarily that
14 goes to paragraph 22?

15 MR. SHORT: Paragraph 22.

16 CHAIR MILLER: Yes.

17 MR. MCPHERSON: Yes.

18 CHAIR MILLER: Okay.

19 MR. MCPHERSON: I think, as I
20 said earlier, the interpretation of
21 paragraph 22 in plain language means
22 applicant. That means anyone who applies

1 for the liquor license for this
 2 establishment. Not just Dr. Wesley Gordon.
 3 He was not an applicant at the time that
 4 this agreement was written. He held a
 5 liquor license. So this is to cover anyone
 6 who applies. They would have to meet the
 7 terms of this agreement. It's attached to
 8 the liquor license.

9 CHAIR MILLER: Okay.

10 MR. MCPHERSON: So the
 11 interpretation that I'm hearing is not what
 12 paragraph 22 means. I don't know how you'll
 13 make it any clearer than the way it's
 14 written.

15 MR. BURCHELL: May I --

16 CHAIR MILLER: Okay.

17 MR. BURCHELL: address that
 18 issue?

19 CHAIR MILLER: Okay. Yes. It
 20 goes to the point. That goes to the point.
 21 Okay.

22 MR. BURCHELL: And that goes

1 right to the point. If you go to page one
2 of the Voluntary Settlement Agreement, and
3 it states, this Voluntary agreement (the
4 agreement), is entered into and made this
5 14th day of February, 1998, by and between
6 Caribe Food Corporation (applicant), a DC
7 Corporation, and Alpha McPherson, both
8 individually and as President of GFEDDS
9 Neighborhood Association, Incorporated
10 (GFEDDS).

11 Now applicant is defined within
12 the agreement. And the definition of
13 applicant, according to this language, is
14 Caribe Food Corporation. Every time that
15 they refer to applicant, it's talking about
16 Caribe Food Corporation. Just like every
17 time they referred to GFEDDS, they were
18 referring to both Mr. Alpha McPherson and
19 GFEDDS Neighborhood Association,
20 Incorporated.

21 CHAIR MILLER: Okay.

22 MR. BURCHELL: That paragraph

1 should be read within the entire agreement.

2 CHAIR MILLER: Okay. Mr.
3 Alberti?

4 MEMBER ALBERTI: I just want to
5 make a comment, and this is my opinion. I
6 have not changed my mind about the original
7 Order. I think that paragraph 22 in the
8 original SA is pretty clear, the plain
9 meaning of that is that it wouldn't apply to
10 the current licensees. That's my opinion.

11 However, what the Board has not
12 considered, and I think that we need to
13 think about this a bit, is because this
14 license could revert back to an entity that
15 may have been established by Dr. Gordon,
16 obviously had an interest in this building
17 or some company, and we'd have to figure
18 that out, but I think we need to think about
19 what happens if the license reverts back
20 with respect to how this Settlement
21 Agreement would apply. And I don't know.
22 This gets very complicated, but my opinion

1 is that it doesn't apply to the current
2 licensees. So that's --

3 MR. SHORT: Could you repeat
4 that, Mr. Alberti?

5 MEMBER ALBERTI: Pardon?

6 MR. SHORT: Please repeat that.

7 MEMBER ALBERTI: All right. So
8 we decided in the original order to put it
9 in plain terms, that this original SA does
10 not apply to the current licensees. Right?
11 That was our, and I stand by that opinion.
12 Okay. However, there's a wrinkle here.
13 What we did not consider is, what happens if
14 this licensee reverts back to a Gordon
15 entity?

16 CHAIR MILLER: I think this is a
17 term provision. It says, the term of this
18 agreement, and I think once a term ends, you
19 don't, you can't like come back to it years
20 later and then say, oh, the agreement's --

21 MEMBER ALBERTI: Yes, I don't, I
22 think I'd kind of like to --

1 CHAIR MILLER: Yes.

2 MEMBER ALBERTI: that under
3 advisement.

4 CHAIR MILLER: Okay. My opinion
5 --

6 MEMBER ALBERTI: I don't have an
7 opinion, that's your, look, right. I
8 haven't thought this through enough, and I'd
9 like, I'd like to hear some other legal
10 arguments on that. But for now, I think the
11 issue with this current licensee is settled,
12 in my opinion, it doesn't apply to them.
13 Now the Gordon --

14 MRS. GORDON: I'm here.

15 MEMBER ALBERTI: Mrs. Gordon
16 might have, may have an opinion because she
17 has a right to this license if these lessees
18 default. So, but --

19 MR. BURCHELL: Well, if I may,
20 just --

21 CHAIR MILLER: Yes.

22 MR. BURCHELL: First of all, just

1 to be clear, I'm not an advocate of Dr.
2 Wesley Gordon, or Caribe Food Corporation,
3 or Mrs. Gordon. I'm here representing
4 Micherie, LLC.

5 MEMBER ALBERTI: Right.

6 MR. BURCHELL: Our interest is
7 not having the agreement applied to us.
8 Whatever the Board decides as far as Caribe
9 Food Corporation and Dr. Wesley Gordon, or
10 any business that's established from one of
11 the two, we have no say. We, matter of
12 fact, it's our position that the Settlement
13 Agreement doesn't apply to us, so we really
14 can't offer any arguments, because
15 technically we don't have privity of
16 contract with this Settlement Agreement.
17 That's been our position the entire time.

18 MS. GREEN: Excuse me.

19 CHAIR MILLER: Okay. Yes, Ms.
20 Green?

21 MS. GREEN: I think one of the, I
22 think one of the issues that, you know, in

1 Mr. Alberti's question about whether this
2 reverts back to the Gordon's, that is one
3 part of it. But what was not stated is,
4 does the applicant, or does the licensee at
5 this point, the current licensee, do they
6 have the ability to sell this to somebody
7 else? If tomorrow, if they, you know,
8 decide they don't want to be in the business
9 of running this establishment, do they have
10 the ability, under the terms of their
11 agreement with the Gordons, do they have the
12 ability, you know, to sell it to me or to,
13 you know, to Mr. McPherson, or to anybody
14 else? Because I just think this just goes
15 to the question again at paragraph 22, in
16 fact is this really, is this really an
17 ending of the Settlement Agreement?

18 MEMBER ALBERTI: I'm sorry, Ms.
19 Green. I don't understand how it relates to
20 paragraph 22 at all. I mean, what they do
21 the license, what they're allowed to do with
22 the license, I don't see how that relates to

1 paragraph 22 at all.

2 MS. GREEN: Well, to me --

3 MEMBER ALBERTI: Can you maybe
4 explain that to me?

5 MS. GREEN: Well, in your fact
6 finding Order, you said there was no
7 connection. And if there is, to me there
8 would still be a connection if they aren't
9 free to sell this, you know, to transfer
10 this license to somebody else. There's
11 still, this connection is still there. If
12 they're being limited, if they're being
13 limited by the agreement --

14 MEMBER ALBERTI: I see what
15 you're saying.

16 MS. GREEN: Okay. If they're
17 being limited. So, I mean, there are
18 different scenarios.

19 MEMBER ALBERTI: And that goes to
20 my, and that goes to the concern I just --

21 MS. GREEN: Right. It goes to
22 that concern. And what we were, in terms of

1 the ANC settlement, what we were -- it was
2 explained to us, and again, I'm not an
3 attorney and I'm not representing myself
4 this way, and I'm not representing myself as
5 an expert on ABC law in this city, which I
6 know is very complex. What was represented
7 to us when we first got into this in a
8 public meeting was that this Settlement
9 Agreement took precedence over an ANC
10 Settlement Agreement.

11 That's what this, that's the way
12 it was represented by staff to us, that
13 this, that this took precedence. That if
14 this is still in effect, then, you know, it
15 was in effect until 2015, 2016, and then the
16 ANC agreement, you know, then another
17 agreement could, that's the way it was
18 represented to us.

19 And then what happened is that
20 the Cheerz, you know, said, hey, we don't
21 think this agreement is, so we're voiding
22 this agreement.

1 CHAIR MILLER: I don't believe
2 that they said they were voiding the
3 agreement, because I just heard Mr. Burchell
4 say that they're not a party to the
5 agreement, they're not bound by the
6 agreement.

7 MS. GREEN: Okay. That the
8 agreement should be -- then my term is
9 wrong.

10 CHAIR MILLER: Okay.

11 MS. GREEN: The term should be,
12 should be eliminated as not binding,
13 whatever. Our ANC went into a Settlement
14 Agreement with them, and that to me is a
15 separate issue. And I'm not disputing the
16 validity of the ANC agreement. Just for the
17 record, I am not. I'm not saying that we
18 didn't vote to do it or anything else. I'm
19 simply saying that the matter of this
20 particular agreement with GFEDDS and with
21 Mr. McPherson is a separate issue, and I
22 don't want to interpret, again, ABC law, but

1 I'm here, you know, to represent a
2 constituent --

3 CHAIR MILLER: Okay.

4 MS. GREEN: that I, and
5 therefore, I would, I think the question of
6 whether or not Cheerz has the ability,
7 really has this license, do they have the
8 ability to pass it on to somebody else? All
9 of that is really relevant in the Board's
10 consideration of whether or not this
11 agreement stands.

12 CHAIR MILLER: Okay. So --

13 MS. GREEN: Based on the term,
14 and the statement in your agreement that
15 there is no, in your fact finding that there
16 is no connection. I'm questioning --

17 CHAIR MILLER: Okay.

18 MS. GREEN: whether there is no
19 connection.

20 CHAIR MILLER: Okay. All right.
21 That might be a little bit broad, but what
22 we're going, what we have said in our Order

1 is that that Settlement Agreement terminated
2 by its own terms. But we gave you all the
3 opportunity to come forward, make any other
4 arguments, whatever. So what we'll do is
5 we'll take under advisement what we've heard
6 today and then confirm or not, you know,
7 this Order. So if this Order stands, then
8 that agreement is terminated, so your --

9 MRS. GORDON: I understand.

10 CHAIR MILLER: Settlement
11 Agreement is unaffected by it. Right? I
12 don't want to go too far down legal
13 conclusion, but it won't be in existence.
14 Okay. But I understand that we will look at
15 the, you know, if we decide that no, it
16 isn't terminated, then we will consider what
17 you were addressing about passing on or
18 whatever, those issues. Okay. All right.
19 I think we've heard a lot. Thank you. So
20 we'll get back to you soon on this.

21 MS. GREEN: Thank you. I
22 appreciate your time.

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MR. BURCHELL: Thank you.

CHAIR MILLER: Okay. Thank you.

(Whereupon, the above hearing was
concluded at 2:55 p.m.)

A				
ABC 9:2 14:13	34:20 36:8 37:4,7	14:19 15:5 17:9	29:8 39:14,19	25:2,5,13,16,19
15:9,20 16:16	38:2,3,4,12 39:1	17:10,12 36:22	40:14,19 43:2	26:4,9,13 27:7,11
23:11 35:5 45:5	39:21 40:18 42:7	37:3 38:6,11,13	48:20	27:16,20 28:2,11
46:22	42:13,16 43:11,17	38:15 43:4	based 24:15 26:5	28:15,19 29:5,10
ability 11:6 43:6,10	44:13 45:9,10,16	applied 42:7	34:17,18,19 35:8	29:15,22 30:4,9
43:12 47:6,8	45:17,21,22 46:3	applies 9:7 12:12	47:13	30:15,18 31:1,10
above-entitled	46:5,6,8,14,16,20	36:22 37:6	basically 4:1,12	31:14 32:3,9 33:1
22:13	47:11,14 48:1,8	apply 5:21 12:15	18:15 27:16 34:11	33:4,16,21 34:5
ABRA 19:17 25:7	48:11	13:7 39:9,21 40:1	34:21	35:17 36:2,7
26:10 35:19	agreement's 40:20	40:10 41:12 42:13	basis 13:21 16:21	37:15,17,22 38:22
absolute 15:21	agreements 30:5	appreciate 48:22	behalf 2:16	41:19,22 42:6
16:10	33:10,12,14	appropriate 25:6	believe 5:18 14:3	46:3 49:1
absolutely 6:14	ahead 29:17 31:14	approve 11:14	19:14,17 21:1	business 5:21 8:17
22:2 29:13	Alberti 1:16 17:19	argue 7:4 10:10	23:2 36:7 46:1	9:3 10:7 11:7
active 24:14	17:22 18:10,19,22	argument 4:3 6:22	belly 20:15	13:1 14:14,16
actual 13:13	19:3,8,20 20:1,3	8:7 10:11 12:1	benefit 14:5	15:9 16:3,7,8
add 5:7,12 7:19 9:4	20:11 21:3,8,11	13:3,5	Beverage 1:2,11,12	17:13 23:21 24:1
36:11	22:2,5,9,19 23:3	arguments 4:4 6:20	beyond 14:3 22:1	24:14 26:3,6
additional 7:9 9:4	27:4,8,14,19,22	22:6 41:10 42:14	big 10:9,15	32:14 33:20 35:3
address 4:12 8:3	28:9,12,17 29:2,6	48:4	binding 46:12	42:10 43:8
37:17	29:13,16 31:11,15	Articles 28:19	bit 39:13 47:21	businesses 33:13
addressing 48:17	31:19 39:3,4 40:4	aside 20:7	Board 1:2,12 3:11	
admit 12:6,6	40:5,7,21 41:2,6	asking 15:1 17:8,9	3:14 9:6 17:14	C
advisement 4:15	41:15 42:5 43:18	17:9 33:9	20:9 24:16 33:11	C 2:1
41:3 48:5	44:3,14,19	associated 27:9	35:18 39:11 42:8	call 2:4 4:3 18:2
advocate 42:1	Alberti's 43:1	Association 30:20	Board's 5:19 17:5	called 2:5
affect 32:13 33:19	Alcoholic 1:2,11,12	38:9,19	47:9	capacity 29:1
affiliated 10:6	alive 14:11,18	assume 27:9 28:4	bound 46:5	captures 18:22
afternoon 2:15 3:3	allowed 11:3,21	assumed 28:7	brief 22:14	Caribe 9:9,11 10:1
agency 31:16	43:21	assuming 11:16	brings 17:22	10:7,20 24:5
ago 34:6	Alpha 3:4 38:7,18	15:3,4	broad 47:21	25:16,21 27:6
agree 22:3	amendment 31:16	assumptions 35:2	broken 27:2	28:10,13,22 30:19
agreed 27:18,19	ANC 2:7 11:13	attached 3:15 37:7	BROOKS 1:15	38:6,14,16 42:2,8
agreement 3:13,14	34:1,8,11 36:3	attorney 19:6 45:3	brought 12:2	case 1:8 2:9 9:13
3:15,17 4:6 5:1,2	45:1,9,16 46:13	August 5:14 7:10	building 1:12 12:7	13:7 18:2 24:2
6:1,5,6 8:19,21	46:16	8:8 31:4	13:4,11 19:12	certainly 13:7
9:20 10:4,16,17	and/or 24:12	automatically	20:17 39:16	chain 27:2
10:22 11:2,10,20	answer 17:1,1,7,18	12:12	built 32:18	Chair 2:3,18,21 3:2
12:8,11,15,22	20:6 21:1,7	available 9:19	Burchell 2:15,16	3:6,9 4:18,21 5:6
13:6,13 14:9 19:9	answered 17:3	Ave 1:7	7:7,14,22 8:2,6,13	5:10,14,17 6:19
20:5 21:15,18,21	anybody 43:13	Avenue 2:6	10:14 13:19 14:1	7:2,5,12,15 8:1,5
27:9,12,13,17	apologize 12:19	aware 14:15 35:4	19:7,7,8,13,22	8:12 10:13 13:16
29:3 30:3,13 31:3	appear 24:13		20:2,10,20 21:5	13:20 14:2 15:8
31:6,7,9,17,21,22	appeared 24:6	B	21:10,13 22:4,8	17:4,17,21 20:12
32:5,6,12,13,18	Appellant 8:22	back 12:1 13:2 18:7	22:11,15,21 23:4	23:5,7,13,15,19
33:19 34:1,10,12	applicant 4:11 9:1	18:14 19:11,18	23:5,6,12,14,17	24:3,17,22 25:4
	9:8 11:6 14:10,12	21:16 22:15,18	23:22 24:4,19	25:10,15,18 26:1

26:8,12,15,19 27:1 29:18 32:15 32:21 33:2,7 34:14 35:10,11,14 35:20 36:10,13,16 36:18 37:9,16,19 38:21 39:2 40:16 41:1,4,21 42:19 46:1,10 47:3,12 47:17,20 48:10 49:2 Chairperson 1:13 1:15 changed 39:6 changes 11:15 Cheerz 1:6 2:5,17 2:20 3:1,16 6:7,8 6:13 15:22 19:15 24:21 45:20 47:6 choose 7:19 circumstances 11:16 city 45:5 claim 20:17 clarification 7:11 8:15 35:10 clarify 32:16 clear 6:11 8:9,19 21:21 25:13 34:19 39:8 42:1 clearer 37:13 clears 33:5 clients 13:9 21:4 Code 11:3,4 collateral 20:19 COLUMBIA 1:1 come 2:10 40:19 48:3 comes 21:14 coming 29:21 32:8 35:13 comment 39:5 Commissioner 3:8 community 11:14 33:13,20 35:21 company 9:1 14:11 14:19 15:6,14,16	18:10 26:16 39:17 compel 17:11,12 completely 22:6 complex 45:6 complicated 39:22 concern 35:21 36:6 44:20,22 concerns 4:14 concluded 49:4 conclusion 7:16 34:17 48:13 confirm 48:6 connection 6:3,10 44:7,8,11 47:16 47:19 connections 9:14 consider 40:13 48:16 consideration 47:10 considered 39:12 constituent 47:2 contain 19:9 contested 3:21 continued 18:14 continuing 16:21 contract 42:16 Control 1:2,11,12 corporation 9:9 10:1,7,20 21:16 24:6,10 25:22 28:6,10,14,22 30:19 38:6,7,14 38:16 42:2,9 Corporation's 25:17 correct 4:19 5:16 26:19 27:3,4 counsel 2:16 course 6:5 cover 37:5 covers 5:20 8:17 CR 1:7 current 18:3,4 39:10 40:1,10 41:11 43:5	<hr/> D <hr/> D 2:1 D.C 1:13 d/b/a 25:17 date 30:6,7 Dated 5:14 day 38:5 DC 11:3,4 26:10,14 38:6 deal 16:19 Deanna 2:22 decide 18:6,11 43:8 48:15 decided 16:2 40:8 decides 20:14 42:8 decision 35:8 declared 18:13 default 19:12 41:18 defer 12:1 defined 38:11 definition 38:12 different 18:18 44:18 direct 20:12 discussed 31:5 discusses 13:1 dispose 16:11 disputing 46:15 DISTRICT 1:1 document 30:12 documents 17:13 36:4 DONALD 1:15 double-check 23:1 Dr 8:22 9:2,8,12,22 10:7 12:5,14 13:9 13:12 14:10,12,16 14:17,19 15:6,17 16:6 21:17 35:6 37:2 39:15 42:1,9	effective 21:19 either 9:10 eliminated 46:12 elimination 33:19 email 34:9 36:1 emailed 36:3 ends 40:18 enforceable 11:11 enforced 34:13 Enforcement 3:13 5:2 entered 31:3 36:8 38:4 entire 8:21 14:9 31:6 39:1 42:17 entitled 3:11 30:12 entity 39:14 40:15 establish 23:10 established 9:1 14:12,16,19 15:6 15:14,17 18:7,11 21:17 26:17 35:6 39:15 42:10 establishment 2:5 4:11 7:6 9:10 35:5 37:2 43:9 everybody's 14:5 exact 11:4 Excuse 42:18 executed 33:22 existence 48:13 existing 11:6 exists 23:18,20 expert 45:5 expiration 32:18 expired 32:22 explain 27:14 44:4 explained 45:2 express 4:16 extend 11:19 21:22 extremely 12:20	fair 17:10,15 36:8 familiar 28:16 far 42:8 48:12 fear 19:1 February 30:11 38:5 Federal 26:11,13 figure 39:17 file 3:19 34:7 filed 4:19 7:10 17:2 25:5 finally 6:13 find 32:12 finding 1:6 2:4,8 3:21 32:17 44:6 47:15 fine 32:9 first 8:4,16 9:6 17:18 30:7,9 41:22 45:7 focus 31:6 34:15 follow 25:7 Food 9:9 10:1 24:6 25:16,21 27:6 28:13,22 30:19 38:6,14,16 42:2,9 Forgive 29:20 forgotten 18:3 forward 2:10 48:3 found 3:15 26:10 32:21 free 16:11 44:9 front 20:22 30:10 funds 16:14 future 11:14 16:14
		<hr/> E <hr/> E 2:1,1 earlier 24:4 34:8 36:3,20 effect 18:14 31:9,19 45:14,15	<hr/> F <hr/> fact 1:6 2:4,8 3:21 28:21 32:2,17 42:12 43:16 44:5 47:15	<hr/> G <hr/> G 2:1 Georgia 1:7 2:6 getting 17:2 GFEDDS 3:4 30:19 38:8,10,17,19 46:20 give 11:4 21:6 22:11 30:11 go 6:16 13:3,12,16 14:3 16:4 18:14

22:12 23:20 29:11 29:17 31:14 38:1 48:12 goes 13:2 20:15 35:20 36:14 37:20 37:20,22 43:14 44:19,20,21 going 2:3 5:21 8:2 8:10 10:14 13:16 14:4 18:6 47:22 good 2:15 3:3 33:14 35:14 Gordon 8:22 9:2,8 9:12,22 10:8 12:5 12:14 13:10,12 14:10,13,16,18,20 15:6,17 16:6,7,8 16:13 18:7,11 21:17 22:18 23:9 23:10 26:17 27:20 28:5,7,8 35:7 37:2 39:15 40:14 41:13 41:14,15 42:2,3,9 48:9 Gordon's 43:2 Gordons 6:9,12,17 43:11 gotten 7:17 Graves 2:19,19 9:18 26:18,21 great 16:19 Green 3:7,7 14:21 15:11 17:8,22 18:9,16,21 19:2 42:18,20,21 43:19 44:2,5,16,21 46:7 46:11 47:4,13,18 48:21 guess 14:14 33:8 guessing 15:15	hear 3:21 35:15 41:9 heard 46:3 48:5,19 hearing 1:6,12 3:21 4:1,7 24:7 35:1 37:11 49:3 HECTOR 1:17 held 10:3 23:10 28:21 37:4 helpful 21:12 HERMAN 1:16 hey 45:20 holding 26:7 28:22 holds 9:2 14:13 15:9 honest 21:6 husband 16:9	invitation 17:6 invited 3:18 involves 11:5 issue 12:4 37:18 41:11 46:15,21 issued 3:11 4:13 7:15 18:5 issues 7:9 8:3 42:22 48:18	leave 16:5 led 19:17 legal 2:16 34:16 35:8 36:1 41:9 48:12 legally 6:15 lessee 20:14 29:4,5 29:6 lessees 41:17 let's 18:2,11 28:4 letter 17:2 license 1:8 2:6 3:16 5:22 6:4,5,14,15 6:16 9:2 10:21 12:9 14:13 15:9 15:21 16:1,11,14 16:17 18:5 19:10 19:15 20:13,18 23:11 24:8,11,17 26:7,16 27:5,18 28:1,21 29:3 37:1 37:5,8 39:14,19 41:17 43:21,22 44:10 47:7 licensee 6:3 11:7 40:14 41:11 43:4 43:5 licensees 16:16 18:3,4 39:10 40:2 40:10 licenses 15:20 16:18 limited 34:22 44:12 44:13,17 liquor 12:9 24:8 37:1,5,8 listen 4:13,14 little 12:16 18:18 33:22 34:6 47:21 LLC 1:5 9:15 12:6 42:4 located 2:5 longer 14:11 16:3 23:17,19,20 26:6 look 41:7 48:14 Looking 23:8 lot 33:12 48:19	lump 16:21
M				
Madam 35:10 Marvin 2:19 9:18 matter 1:4 22:13 42:11 46:19 McPherson 3:3,4 4:17,20 5:4,8,11 5:16,18 6:21 7:3 8:4 36:17,19 37:10 38:7,18 43:13 46:21 mean 6:21 7:13 12:11 13:20 14:22 17:11 18:1 19:20 43:20 44:17 meaning 11:17 14:6 39:9 means 36:21,22 37:12 meet 37:6 meeting 1:3 45:8 member 1:15,16,16 1:17,17,18 17:19 17:22 18:10,19,22 19:3,8,20 20:1,3 20:11 21:3,8,11 22:2,5,9,19 23:3 27:4,8,14,19,22 28:9,12,17 29:2,6 29:13,16 31:11,15 31:19 33:11 39:4 40:5,7,21 41:2,6 41:15 42:5 43:18 44:3,14,19 members 11:14 met 1:12 Micherie 1:5 9:15 10:5 11:18 12:6 42:4 MIKE 1:17 Miller 1:13,15 2:3 2:18,21 3:2,6,9 4:18,21 5:6,10,14 5:17 6:19 7:2,5,12 7:15 8:1,5,12				

10:13 13:16,20 14:2 15:8 17:4,17 17:21 23:5,7,13 23:15,19 24:3,17 24:22 25:4,10,15 25:18 26:1,8,12 26:15,19 27:1 29:18 32:15,21 33:2,7 34:14 35:11,14,20 36:10 36:13,16,18 37:9 37:16,19 38:21 39:2 40:16 41:1,4 41:21 42:19 46:1 46:10 47:3,12,17 47:20 48:10 49:2 mind 39:6 Mm-hmm 23:6 modification 10:17 11:1 modified 24:12 moment 21:6 money 16:20 moot 18:13 moving 12:2,18	noticed 33:12 notifying 11:8 nuance 22:6 null 6:2 Nullify 3:12 4:22 Number 2:6 NW 1:7	35:5 operating 13:1 16:9 opinion 39:5,10,22 40:11 41:4,7,12 41:16 opportunity 48:3 opposed 6:20 order 3:11,18 4:14 6:1 7:16 13:21 17:5 32:16 39:7 40:8 44:6 47:22 48:7,7 original 7:10 31:17 31:20 32:12 39:6 39:8 40:8,9 owned 9:15 25:21 35:6 owner 2:20 3:1 6:9 19:11 20:17 28:6 29:8 ownership 10:20 11:9,15 28:8	26:22 28:5,8 passing 48:17 payments 16:17,20 people 10:6 36:1 percent 20:22 22:16,22 period 8:21 14:9 25:8 permission 16:6 person 9:19 place 9:7 30:3 plain 8:18,20 10:2 11:17 12:2 14:6 36:21 39:8 40:9 please 2:14 8:14 40:6 point 18:1 37:20,20 38:1 43:5 posing 20:7 position 26:2 42:12 42:17 possessing 6:4 possession 19:16 possible 28:6 precedence 45:9,13 premise 6:8,8 premises 9:3 14:14 15:10 23:11 Present 1:14,20 4:4 President 3:4 38:8 presiding 1:13 pretty 7:12 8:19 33:14 39:8 primarily 36:13 privity 42:15 problem 7:22 13:19 22:8 procedures 25:3,7 29:12 processes 29:11 produce 17:12 protest 25:8 provide 15:5 provided 15:2 provision 9:5,7 11:4,12,21 12:1 12:13,17 19:10	20:16 22:17 40:17 provisions 11:10 public 45:8 purely 28:4 purpose 17:2 purposes 24:8 put 7:19 18:2 30:3 40:8
N	O	P		Q
N 2:1 N.W 1:13 name 9:19 18:4 19:6 25:20 narrowed 34:15 necessary 13:18 36:4 need 14:3 22:9 39:12,18 negotiating 10:18 Neighborhood 3:5 30:20 38:9,19 new 10:11 NICK 1:16 Northwest 2:6 note 10:12 24:5 noted 24:9 notes 12:3 20:21 notice 3:12 4:22 25:1	O 2:1 oath 4:2 objection 3:19,19 4:9,19,22 7:10 10:10 objections 4:10 5:13 objectors 14:15 obtain 28:1 obtained 27:6 obviously 39:16 OCTOBER 1:10 offer 42:14 Office 32:4 oh 26:12 40:20 okay 2:3,18,21 3:9 4:15,18,21 5:2,5 5:10,17 6:19 7:2 7:14,22 8:1,5,11 8:12,15 10:13,18 17:4,21 18:9 19:5 22:15 23:8,8 24:3 25:4,10,12,15,18 26:1,1,8,12,19 27:1,3,3 29:7,17 29:17,22 30:9,14 30:21 31:18 32:1 33:4,7 35:11,11 36:10,18 37:9,16 37:19,21 38:21 39:2 40:12 41:4 42:19 44:16 46:7 46:10 47:3,12,17 47:20 48:14,18 49:2 once 28:8 40:18 open 7:13 operate 11:7 16:3	P 2:1 p.m 2:2 49:4 page 38:1 paper 2:12 paperwork 25:6 paragraph 5:19,20 8:17 10:2 11:18 13:22 14:17 21:20 21:22 34:19 36:14 36:15,21 37:12 38:22 39:7 43:15 43:20 44:1 Pardon 40:5 Parking 31:2,5,8 32:5,13,17 part 6:10 10:1,15 29:2 34:7 43:3 particular 7:21 46:20 parties 10:18 party 46:4 pass 47:8 passed 13:10 23:9	passing 48:17 payments 16:17,20 people 10:6 36:1 percent 20:22 22:16,22 period 8:21 14:9 25:8 permission 16:6 person 9:19 place 9:7 30:3 plain 8:18,20 10:2 11:17 12:2 14:6 36:21 39:8 40:9 please 2:14 8:14 40:6 point 18:1 37:20,20 38:1 43:5 posing 20:7 position 26:2 42:12 42:17 possessing 6:4 possession 19:16 possible 28:6 precedence 45:9,13 premise 6:8,8 premises 9:3 14:14 15:10 23:11 Present 1:14,20 4:4 President 3:4 38:8 presiding 1:13 pretty 7:12 8:19 33:14 39:8 primarily 36:13 privity 42:15 problem 7:22 13:19 22:8 procedures 25:3,7 29:12 processes 29:11 produce 17:12 protest 25:8 provide 15:5 provided 15:2 provision 9:5,7 11:4,12,21 12:1 12:13,17 19:10	question 8:16 15:18 15:20,22 16:22 17:3,15,15,20 18:12,15 20:4,7,8 20:13 21:1 23:8 29:19 43:1,15 47:5 questioning 47:16 questions 6:18,20 6:22 7:4,8 8:14 17:6 33:9 quite 18:17
				R
				R 2:1 raised 7:9 8:3 ratified 34:2 35:18 read 30:2 33:10 39:1 ready 2:13 really 7:18,20 18:22 21:8 42:13 43:16,16 47:7,9 reason 21:18 32:10 33:8 reasons 13:5 recess 22:14 record 2:14 5:3,5 7:20 9:17 10:12 24:5,9 25:14 46:17 records 26:5 Reeves 1:12 refer 38:15 references 32:4 referred 38:17 referring 38:18

refining 20:12	17:21 18:20,21	settlement 3:13,14	start 3:10 4:8	48:2
regard 8:20	19:1,4 20:21	3:15,17 4:6 5:1,2	state 3:10	testimony 4:2
Register 26:14	26:15 27:6 28:9	9:20 10:4,22 11:2	stated 3:20 43:3	Thank 23:3 29:7
rein 16:11	29:7,16 30:10	11:10 12:8,11,14	statement 47:14	35:9 36:5 48:19
related 17:20	33:3 34:9 38:1	12:22 13:6,13	statements 7:17	48:21 49:1,2
relates 14:17 43:19	40:7,10 41:7,17	20:4 21:15,18	states 8:20 38:3	thing 10:9 12:19
43:22	42:5 44:21 47:20	30:3 31:17,21	status 23:16 24:7	15:12 21:13
relation 9:22	48:11,18	33:10 34:1,10,12	33:3	things 5:11 30:2
relationship 15:13	RODRIGUEZ 1:17	35:16 38:2 39:20	statutes 10:15	33:6
relevant 47:9	Room 1:12	42:12,16 43:17	Stay 3:13 5:1	think 4:8 11:17
remains 15:7	running 43:9	45:1,8,10 46:13	step 13:14,14	13:14,20 14:22
reminded 13:9	Ruthanne 1:13,15	48:1,10	stop 8:14	17:5,10,20 18:15
renege 22:19		sheet 2:12	Street 1:13 31:2,5	22:9,16 36:19
reneges 20:14	S	Short 1:18 29:20	32:4,17	39:7,12,13,18,18
renegotiation	S 2:1	30:1,6,14,16,21	structure 12:10	40:16,18,22 41:10
11:20	SA 39:8 40:9	31:8,11,18 32:1,7	subject 34:22,22	42:21,22 43:14
renewed 24:8,11,12	safekeeping 24:9	32:11,20 33:5,8	submit 8:18 9:5	45:21 47:5 48:19
rent 12:10 13:4,10	sales 27:9,13	33:18 34:4 35:9	submitted 8:7 9:21	third 9:18
20:15	sanctioned 11:22	35:12,22 36:5,12	35:18	thought 41:8
rented 12:13 13:6	Sands 6:3 23:12,13	36:15 40:3,6	subsidiary 9:11	three 9:15
renting 12:7	23:16 24:18 25:11	side 33:15	sudden 21:19	tied 6:5
repeat 14:5 40:3,6	25:11,17,19 27:2	sign 2:12	suddenly 12:15	time 24:11,14 37:3
reports 24:15 26:10	Sara 3:7	Silver 6:3 23:12,13	sum 16:21	38:14,17 42:17
represent 47:1	saying 44:15 46:17	23:16 24:18 25:10	supplement 8:7	48:22
represented 45:6	46:19	25:11,17,19 27:2	sure 5:8 7:4 8:8	titled 31:2
45:12,18	says 4:21 6:1,1 14:8	SILVERSTEIN	13:17 20:22 23:1	today 6:16 9:19
representing 42:3	14:18 15:8 21:21	1:17	23:22 27:21	24:4 48:6
45:3,4	40:17	simple 18:2	suspect 6:11	tomorrow 15:22
request 17:14	scenario 19:4	simply 18:2 46:19		43:7
requirements	scenarios 44:18	sir 19:5 29:15	T	top 19:13 20:20
11:13	seat 2:10	situation 12:21	t/a 1:6	topic 4:7
research 26:5	second 11:22 13:17	skipping 8:10	table 2:11	total 33:19
researching 24:2	22:12 30:8,11,21	soliciting 7:21	take 2:10 4:15 48:5	totally 16:10
respect 33:15 39:20	31:1	somebody 16:2	talked 14:6	transfer 6:17 10:3
respond 7:6	see 21:18 43:22	43:6 44:10 47:8	talking 38:15	10:4,19 11:9
responding 7:8	44:14	soon 48:20	technically 42:15	15:21 16:1,19
response 7:18	seek 8:14	sorry 12:18 43:18	tell 26:5	18:6 19:18 21:16
restaurant 5:22	seeking 30:5 34:12	sort 18:1	term 8:20 14:8	27:18 44:9
25:20	seen 14:21 15:2	speak 2:9	40:17,17,18 46:8	transferred 19:16
restraints 11:5	sell 6:15 43:6,12	specifically 11:8	46:11 47:13	24:21 25:1,11
result 27:11	44:9	speculating 28:18	terminated 3:16	transfers 10:5 29:4
Retailer 1:7	sense 10:2 12:16	speculation 28:4	4:6 34:20 48:1,8	treated 31:16
revert 19:10 22:18	sent 34:8	spot 12:13	48:16	try 34:14
39:14	separate 46:15,21	staff 45:12	terms 3:17 10:21	trying 30:1 32:1
reverts 29:7 39:19	September 34:2	stand 31:21 40:11	20:12 22:20 27:17	two 9:16 30:4 42:11
40:14 43:2	set 9:10,12 11:15	stands 11:12 47:11	29:8 34:21 37:7	two-part 15:12
right 3:2,6 6:14 9:6	settled 41:11	48:7	40:9 43:10 44:22	type 11:1,20

U	went 24:1 25:2 26:2 46:13 weren't 35:4 Wesley 8:22 9:2,8 9:12,22 10:8 12:5 13:9,12 14:10,12 14:17,20 21:17 26:17 35:6 37:2 42:2,9 wife 13:11,11 words 10:19 14:7 34:19 worked 25:6 wouldn't 39:9 wrinkle 40:12 written 7:17 37:4 37:14 wrong 35:2 46:9	2013 24:5,7,20 26:6 2014 1:10 3:11 5:15 24:20 2015 45:15 2016 45:15 22 5:19,20 8:17 10:2 11:18 13:21 13:22 14:4 21:20 21:22 23:8 34:2 34:20 36:14,15,21 37:12 39:7 43:15 43:20 44:1 25-4-46.02 11:5 28th 8:8
V	validity 46:16 variation 18:19 violate 29:8 void 3:12 5:1 6:2 30:5 voiding 45:21 46:2 Voluntary 8:19 13:13 30:12 31:7 32:5 38:2,3 vote 46:18	3 4 4 7:11 4B 2:7 34:1,9,11 36:3 4B01 3:8 4th 5:14
W	wait 13:17 18:7,8 want 3:9 4:5,9 5:7 5:12 14:14 16:3 16:12 17:17 18:12 19:5,21 23:7 31:13 32:11,16 34:14 39:4 43:8 46:22 48:12 wants 4:11 7:3 16:1 Washington 1:13 wasn't 27:12 Watson 2:22,22 9:18 way 16:7,11,12 20:18 37:13 45:4 45:11,17 we'll 48:4,5,20 we're 4:12 7:20 15:1 17:9,9 22:15 22:22,22 30:5 34:12 45:21 47:22 we've 33:22 35:17 35:18 48:5,19 week 34:6,8 36:3	5 6 7 7303 1:7 2:5 8 9 95178 1:8 2:7
	X Y year 30:2 34:4 years 40:19 Yep 19:22 Z 0 1 1 1:10 100 20:22 22:16,22 10th 24:7 26:6 11th 30:11 14th 1:12 38:5 16 3:11 18th 31:4 1998 30:11 38:5 2 2:07 2:2 2:55 49:4 2000 1:12 31:4 2002 24:12,12 2004 24:13 2007 24:13 2010 24:13,18,20	